

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHAZARUS HILL, SR., No. C-11-4890 TEH (PR)

Petitioner,

v.

MATTHEW CATE, Secretary,

ORDER DISMISSING ACTION AS
FILED IN ERROR; NO FILING FEE
DUE; INSTRUCTIONS TO THE CLERK

Respondent.

The above-entitled action relates to an earlier action filed by Petitioner, a pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 challenging a judgment of conviction from Alameda County Superior Court. The earlier-filed action was docketed as Hill v. State of California, No. 09-cv-03147-TEH (PR) (N.D. Cal. filed July 10, 2009). The Court ultimately stayed that action and closed it administratively to allow Petitioner to exhaust all of his claims in state court. See Hill v. State of California, No. 09-cv-03147-TEH (PR) (N.D. Cal. filed July 10, 2009) (Doc. #13). On September 22, 2011, the Court granted Petitioner's request to lift the stay and reopened the action. See Id., Doc. #21. The

1 Court gave Petitioner until October 28, 2011 to file an amended
2 petition containing all exhausted claims he wished to challenge by
3 way of federal habeas proceedings. Id.

4 Then, on October 3, 2011, Petitioner filed his amended
5 petition. Inadvertently, the amended petition was docketed as a new
6 action entitled Hill v. Cates, No. 11-cv-04890-TEH (PR) (N.D. Cal.
7 filed October 3, 2011). But the document Petitioner filed on
8 October 3, 2011 should have been filed as a court-ordered amended
9 petition under Hill v. State of California, No. 09-cv-03147-TEH (PR)
10 (N.D. Cal. filed July 10, 2009).

11 For the foregoing reasons and for good cause shown:

12 1. The action in Hill v. Cates, No. 11-cv-04890-TEH (PR)
13 (N.D. Cal. filed October 3, 2011) is DISMISSED. No filing fee is
14 due. The clerk is directed to terminate any pending motions as moot
15 and close the file.

16 2. The Clerk is further directed to re-file the amended
17 petition containing all exhausted claims (i.e., Doc. No. 1 in Hill
18 v. Cates, No. 11-cv-04890-TEH (PR) (N.D. Cal. filed October 3, 2011)
19 in the earlier-filed action Petitioner filed in this Court, Hill v.
20 State of California, No. 09-cv-03147-TEH (PR) (N.D. Cal. filed July
21 10, 2009).

22 IT IS SO ORDERED.

23
24 DATED 11/15/2011


25 THELTON E. HENDERSON
United States District Judge

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